



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

BJG

Docket No: 4474-99

3 February 2000

ETCS SS [REDACTED] USN
[REDACTED]
[REDACTED]

Dear Senior [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 3 February 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinions furnished by the Navy Personnel Command dated 26 October and 15 November 1999, copies of which are attached. They also considered your counsel's rebuttal letter dated 19 January 2000.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinions. They were unable to find that you were misdiagnosed. In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records.

Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosures

Copy to:
Gary R. Myers, Esq.



DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

4474-99

1610
PERS-311
26 OCT 99

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: PERS/BCNR Coordinator (PERS-00XCB)

Subj: ETCS [REDACTED] USN, [REDACTED]

Ref: (a) BUPERSINST 1610.10, EVAL Manual
(b) COMSUBGRU TWO ltr 5819 Ser 01L/431 of 6 OCT 98

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests removal of his fitness report for the period 16 September 1997 to 18 June 1998.

2. Based on our review of the material provided, we find the following:

a. A review of the member's digitized record revealed a fitness report for the period ending 15 June 1998 vice 18 June 1998. The member signed the report indicating his desire not to submit a statement. Per reference (a), Annex S, paragraph S-8, the member has two years from the ending date of the report to submit a statement if desired. A statement has not been received from the member.

b. The member feels that the report in question was the result of retribution for successfully filing an Article 138, Complaint of Wrongs.

c. Based on reference (b), the member's original reporting senior submitted a revised report for the period in question. The revised report changed the member's promotion recommendation from "Significant Problems" to "Promotable", raised the "Leadership" trait from "1.0" to "3.0", and altered the comments section to reflect the reason for the member's transfer.

d. The member interprets the comment "being diagnosed unfit for duty by mental health personnel due to stress", refers to him having a mental problem. However, we feel the reporting senior's comment is simply justification for the member assigned Temporary Additional Duty.

Subj: ETCs [REDACTED], USN, [REDACTED]

e. Reference (a), Annex N, paragraph N-14.h allows the reporting senior to comment on a medical condition if necessary to explain other matters in the report. We feel that the reporting senior's comments are appropriate due to the member being previously diagnosed unfit for full duty and subsequently being reevaluated and found fit for full duty.

f. The member does not prove the report to be unjust or in error.

3. We recommend the member's petition be forwarded to the Director, Equal Opportunity Branch (PERS-61) for comments concerning the member's allegation of retribution. If the member's allegation is found to have merit, we have no objection removing the report in question.

4. We recommend retention of [REDACTED] report.

[REDACTED]
Head, Performance
Evaluation Branch



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NAVY PERSONNEL COMMAND
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1610
PERS-61/141
15 Nov 99

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION
OF NAVAL RECORDS

Via: Assistant for BCNR Matters, PERS-00ZCB

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS IN CASE OF
ETCS(SS) [REDACTED], US [REDACTED]

Ref: (a) PERS-00ZCB memo 5420 of 29 OCT 99
(b) COMSUBGRU TWO ltr 5819 Ser 01L/431 of 6 Oct 98
(c) OPNAVINST 5354.1D Navy EO Manual

Encl: (1) BCNR File 05166-99

1. Reference (a) requested an advisory opinion in response to Senior Chief [REDACTED] request to remove a fitness report for the period 16 September 1997 to 18 June 1998. Enclosure (1) is returned.

2. Senior Chief [REDACTED] received a fitness report for the period 16 September 1997 to 24 March 1998 with a mark of 1.0 in leadership, his promotion recommendation withdrawn and the summary block annotated significant problems. Senior Chief Standley had just been transferred off his ship for the purpose of medically diagnosing a possible stress condition within the first month of a six month deployment. Senior Chief [REDACTED] filed an Article 138 grievance against the commanding officer because he felt the fitness report was a result of retaliation since he was unable to complete the deployment. He also alleged other grievances against the chain of command.

3. As a result of an investigation into the Article 138 charges, reference (b) directed some relief to Senior Chief [REDACTED]. The fitness report end date was changed, the mark in leadership was changed to a 3.0, he was given a promotable recommendation, and remarks in block 41 were amended. The revised fitness report is now the report he wants removed. Senior Chief [REDACTED] feels the remarks in block 41 refer to him as having a mental health condition.

4. From the information provided, it is my opinion that the marks in the original fitness report were given as retaliation.

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS IN CASE OF
ETCS (SS [REDACTED])

However, the revised fitness report significantly raised the marks. The remarks in block 41 of the revised fitness report state the reason for the TAD and LIMDU status. This is not retaliation per reference (c). I recommend the report stands as amended.

[REDACTED]

Director, Professional
Relationships Division
(PERS-61)